

shall notify the port director that the merchandise has been assembled and is ready for examination, whereupon final examination shall be made.

§ 151.9 Immediate transportation entry delivered outside port limits.

When merchandise covered by an immediate transportation entry has been authorized by the port director to be delivered to a place outside a port of entry as provided for in § 18.11(c) of this chapter, the provisions of § 151.7 shall be complied with to the same extent as if the merchandise had been delivered to the port of entry, and then authorized to be examined elsewhere than at the public stores, wharf, or other place under the control of Customs.

§ 151.10 Sampling.

When necessary, the port director may obtain samples of merchandise for appraisement, classification, or other official purposes. Samples shall be taken by Customs or a commercial gauger approved in accordance with § 151.13. Samples shall be marked to ensure identification and retained according to established policies.

[T.D. 87-39, 52 FR 9787, Mar. 26, 1987]

§ 151.11 Request for samples or additional examination packages after release of merchandise.

If the port director requires samples or additional examination packages of merchandise which has been released from Customs custody, he shall send the importer a written request, on Customs Form 28, Request for Information, or other appropriate form, to submit the necessary samples or packages. If the request is not promptly complied with, the port director may make a demand under the bond for the return of the necessary merchandise to Customs custody in accordance with § 141.113 of this chapter.

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 75-152, 40 FR 27444, June 30, 1975; T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 151.12 [Reserved]

§ 151.13 Commercial gaugers and commercial laboratories.

Commercial gaugers are commercial organizations and individuals who

measure, gauge, or sample merchandise. (The term "public gauger" has been used to denote a type of commercial gauger dealing mainly with petroleum and petroleum products. "Public gaugers" are commercial gaugers and are subject to the regulations in part 151.) Commercial laboratories are commercial organizations and individuals who analyze merchandise, i.e., determine its composition and/or characteristics through laboratory analysis. Commercial gaugers may own and operate commercial laboratories and vice versa. They may be approved or accredited, respectively, as a single organization, but each part of the organization is subject to the appropriate requirements of part 151.

(a) *Acceptance of reports.* Provided that the commercial gauger or laboratory has complied with the appropriate provisions of the Customs Regulations, and in the absence of clear evidence that the port director should not do so, the port director shall accept the reports as described in the following paragraphs.

(1) Customs shall accept, from Customs-approved commercial gaugers, gauging reports of the net landed quantity of the products described below, except that in the case of crude petroleum of Heading 2709, the gross quantity may be accepted; see § 151.47. Reports shall be given in the appropriate Harmonized Tariff Schedule units of quantity, e.g., liters, barrels, and kilograms.

HTSUS	Product	Unit of quantity
1501 through 1515.	Animal and vegetable oils.	—Kilogram.
2707.10 through 2707.30 and 2902.20 through 2902.44.	Benzene, toluene, and xylene.	—Liter.
2709	Crude petroleum	—Barrel.
2710 (various sub-headings).	Such as fuel oil, motor fuel, kerosene, naphtha, and lubricating oils.	—Barrel.
Chapter 29 (various).	Organic compounds in bulk and in liquid form.	—Kilogram, liter, etc.

(2) Customs shall accept, from Customs-accredited commercial laboratories, laboratory analysis reports giving the characteristics of the products

described below when determined according to the analysis methods indicated. In cases where neither a published commercial method such as an ASTM procedure nor an Official Customs Laboratory Method (OCLM) is indicated, the commercial laboratory shall use a method of analysis which has been approved for use in Customs-

related transactions by the Director, Laboratory & Scientific Services. OCLM's and approved methods will be made available to the public under the Freedom of Information Act (5 U.S.C. 552) and 19 CFR, part 103. Methods published by organizations such as ASTM, API, and similar organizations, are not available from Customs.

HTSUS	Product	Characteristic (analysis method)
2707.10 through 2707.30 and 2902.20 through 2902.44.	Benzene toluene and xylene.	—Distillation characteristics (ASTM D 86). —Xylene isomer content (ASTM D 2306 or other equivalent approved method). —Percent composition by weight (ASTM D 2360, D 3797, D 3798, D 4492 or other equivalent approved methods).
2709	Crude petroleum	—Water by distillation (ASTM D 4006 or other equivalent approved method). —Sediment and water (ASTM D 96 or other equivalent approved method). —API gravity (ASTM D 287 or other equivalent approved method). —Sediment by extraction (ASTM D 473 or other equivalent approved method). —Distillation characteristics (ASTM D 86 or other equivalent approved method).
2710 (various subheadings).	Such as, fuel oil, motor fuel, Kerosene, naphtha, and lubricating oils.	—Water by distillation (ASTM D 95 or other equivalent approved method). —Sediment and water (ASTM D 96 or other equivalent approved method). —API gravity (ASTM D 287 or other equivalent approved method). —Reid vapor pressure (ASTM D 323 or other equivalent approved method). —Saybolt universal viscosity (ASTM D 445 and D 2161 or other equivalent approved methods). —Sediment by extraction (ASTM D 473 or other equivalent approved method). —Percent by weight sulfur (ASTM D 1266, ASTM D 2622, or ASTM D 3120, or other equivalent approved methods). —Percent by weight lead (ASTM D 2547, ASTM D 2599, or ASTM D 3341, or other equivalent approved methods). —Antiknock index (ASTM D 2699 (RON) and ASTM D 2700 (MON); see ASTM D 439).
Chapter 29 (various subheadings).	Organic compounds in bulk and in liquid form.	—Identity using HTSUS descriptions or common or IUPAC nomenclature. —Composition, giving percent by weight of each component. (Various methods published by ASTM, API, AOAC, USP, and similar organizations, may used for identity and composition, e.g., ASTM D 2593 for butadiene, D 2192 for aldehydes, ketones, and similar substances. Approved methods involving gas or liquid chromatography, infrared spectroscopy mass spectrometry, nuclear magnetic resonance spectrometry, and various "wet" chemical procedures and physical tests, e.g., refractive index, and melting point, may also be used.)

(b) *Approval of commercial gaugers and commercial laboratories.* Commercial gaugers seeking approval and commercial laboratories seeking accreditation shall send a letter of application to the U.S. Customs Service, Attention: Director, Laboratory & Scientific Services, Washington, DC 20229. Applications shall include:

- (1) The applicant's legal name and the addresses of the principal place of business and any other facilities;
- (2) A statement of:
 - (i) The services to be provided (e.g., gauging, laboratory analysis, etc.);
 - (ii) The commodities to be gauged, sampled, or analyzed (e.g., petroleum and petroleum products);

(iii) The characteristics to be determined (e.g., distillation characteristics, the amount of sediment and water, etc.); and

(iv) References to the procedures to be used (e.g., ASTM D 1085: Gauging Petroleum and Petroleum Products, ASTM D 86: Distillation of Petroleum Products, etc.);

(3) Detailed statements of ownership and any partnerships, parent-sub-sidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers; other commercial gaugers, laboratories, or samplers; producers; refiners; Customs brokers; carriers; etc.;

(4) A statement of financial condition;

(5) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(6) The names (or titles) and qualifications of each person who will be authorized to sign or approve gauging or analysis reports on behalf of the commercial gauger or laboratory;

(7) A complete description of the applicant's facilities, instruments, and equipment;

(8) A bond executed in accordance with part 113, Customs Regulations (19 CFR part 113); and

(9) A written agreement in the following form to avoid conflict-of-interest situations and to comply with requirements prescribed by Customs:

COMMERCIAL GAUGER (LABORATORY)
AGREEMENT

As conditions for approval (accreditation), I agree:

- To have no financial interest in or other connection with any business or other activity which might affect the unbiased performance of my duties as a Customs-approved (-accredited) commercial gauger (laboratory). I understand that this does not prohibit my accepting the usual fees for professional services.

- To comply with the requirements of part 151, Customs Regulations (19 CFR part 151), and to conduct my professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Director, Laboratory & Scientific Services.

- To maintain the ability, i.e., the instruments, equipment, qualified staff, facilities, etc., to perform the services for which I am approved (accredited) and to allow my performance to be evaluated by the Director, Laboratory & Scientific Services, on a periodic basis by such means as on-site inspections, demonstrations of gauging (analysis) procedures, reviews of submitted records, and proficiency testing through check-samples.

- To notify both the port director and the Director, Laboratory & Scientific Services, of any attempt to impede, influence, or coerce me in the performance of my duties immediately.

- To investigate any circumstances which might affect the accuracy of my work promptly; to correct the situation immediately and to notify both the port director and the Director, Laboratory & Scientific Services, of such matters, their con-

sequences, and any actions taken immediately.

- To notify the Director, Laboratory & Scientific Services, by certified mail within 5 days of any major changes involving legal name; address; ownership; parent-subsidiary relationships; bond; other offices; managerial, professional, or executive staff; approved signatories; facilities, instruments, or equipment; etc.

(c) *Combined approval and accreditation.* An organization having both gauging offices and laboratories may apply for approval and accreditation, respectively, in a single submission. Each part of the organization must meet and maintain the appropriate qualifications and technical and operational requirements, but any requirement imposed on the organization as a whole (e.g., the bond) may be met with one document.

(d) *Determination of competence.* The Director, Laboratory & Scientific Services, shall determine the applicant's competence, independence, and reputation by use of appropriate techniques, including background investigations by Customs Office of Investigations.

(e) *Notice of conditional approval.* The Director, Laboratory & Scientific Services, shall issue conditional approval or accreditation within 60 days of receiving a complete and acceptable application package, including a bond. Gaugers and laboratories may operate under conditional approval or accreditation for no more than 6 months or until their permanent approval or accreditation is issued or disapproved. While under conditional approval or accreditation, gaugers and laboratories are subject to all of the requirements of this part, and their conditional approval or accreditation may be suspended or revoked for cause [see § 151.13(k)], for failure to comply with any provision of this part, or if Customs evaluation uncovers disqualifying factors.

(f) *Notice of approval, disapproval, suspension, or revocation.* When Customs evaluation of the applicant is complete, the Director, Laboratory & Scientific Services, shall notify the applicant that his application has been approved or give the reasons for disapproval. Approvals or accreditations may be suspended or revoked at any time for cause [see § 151.13(k)] or for

failure to comply with any provision of this part, and liquidated damages may be assessed under the commercial gauger's or laboratory's bond. Notices of approval, suspension, and revocation shall be published in the FEDERAL REGISTER and the Customs Bulletin.

(g) *Technical and operational requirements.* To be approved and to maintain approval, a commercial gauger or laboratory shall conform to the following:

(1) *Equipment.* The commercial gauger or laboratory shall be equipped with all instruments and equipment needed to conduct approved services and analyses according to appropriate standards published by recognized standards-writing organizations such as the American Society for Testing and Materials (ASTM), the American Petroleum Institute (API), or the American National Standards Institute (ANSI). The commercial gauger or laboratory shall ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(2) *Procedures.* The commercial gauger or laboratory shall comply in all respects with appropriate procedures published by ASTM, API, etc., and with specific procedures required by the Director, Laboratory & Scientific Services, under paragraph (h) of this section.

(3) *Facilities.* The commercial gauger or laboratory shall conduct his services in facilities which have adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed in the appropriate procedures.

(4) *Personnel.* The commercial gauger or laboratory shall be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (e.g., maintaining equipment, calibrating instruments, performing gauging services or laboratory analyses, evaluating gauging or analytical results, signing gauging or analysis reports on behalf of the commercial gauger or laboratory, etc.). In general, gauging staff should have a minimum of six (6) months training and experience in gauging, and laboratory staff should have a bachelor's degree in the sciences or two years related experience in an analytical laboratory.

(h) *Specific procedures.* The Director, Laboratory & Scientific Services, may require commercial gaugers or laboratories to follow specific procedures if warranted by local circumstances. Commercial gaugers or laboratories may request that such procedures be imposed if they believe that such procedures are warranted. Commercial gaugers or laboratories also may request the Director to review the imposition of specific procedures or delay their implementation.

(i) *Recordkeeping requirement.* The commercial gauger or laboratory shall maintain records of the type normally kept in the ordinary course of business. In addition, the commercial gauger or laboratory shall maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records shall be maintained for five (5) years in accordance with §§ 162.1a through 162.1c of this chapter.

(1) *Transaction records.* Records for each Customs-related transaction, including samples, must have the following:

- (i) A unique identifying number;
- (ii) The date and location where the transaction occurred or the sample was received or taken;
- (iii) The identity of the product (e.g., crude oil);
- (iv) The name of the client; and
- (v) The source of the sample (e.g., name of vessel, flight number of airline, name of individual taking the sample, etc.).

If available, records for each Customs-related transaction, including samples, should have the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(2) *Major instrument records.* Records for each major piece of equipment or instrument (including analytical balances) used in Customs-related work must have the name and type of the instrument, the manufacturer's name, the instrument's model and serial numbers, and the details (names, dates, etc.) of all major servicing, recalibration, etc.

(3) *Records of gauging and analytical procedures.* The commercial gauger or

laboratory must maintain complete and up-to-date copies of all approved gauging and analytical procedures, calibration methods, etc., and must document the procedures each staff member is authorized to perform.

(4) *Gauging and laboratory analysis records.* The commercial gauger or laboratory must identify by number (see paragraph (i)(1)(i) of this section) and must maintain all information or data (such as sample weights, temperatures, references to filed spectra, etc.) associated with each Customs-related gauging transaction or laboratory analysis. Each gauging and analysis record (i.e., the complete file of all data for each separate transaction) must be dated and initialed or signed by the staff member(s) who did the work.

(5) *Gauging and laboratory analysis reports.* Each gauging or laboratory analysis report submitted to Customs must include:

- (i) The name and address of the commercial gauger or laboratory;
- (ii) A description and identification of the sample, including its unique identifying number;
- (iii) The designations of each gauging or analysis procedure used;
- (iv) The gauging or analysis report itself (i.e., the quantity and/or the characteristics of the sample);
- (v) The date of the report; and
- (vi) The initials or signature of the person accepting technical responsibility for the gauging or analysis report (i.e., an approved signatory).

(j) *Verification requirement.* To ensure compliance with part 151 and the accuracy of the information submitted to Customs by commercial gaugers and laboratories, the Director, Laboratory & Scientific Services, may conduct on-site inspections, record reviews, periodic check samples, etc.

(k) *Suspension or revocation of Customs approval or accreditation—(1) Grounds.* If a commercial gauger's or laboratory's reports are repeatedly inaccurate to a significant degree, or if the gauger or laboratory fails to comply with any applicable provision of the Customs Regulations (19 CFR chapter I), the Director, Laboratory & Scientific Services, may suspend or revoke the commercial gauger's approval or the commercial laboratory's accreditation in its en-

tirety, or the Director may suspend or revoke one or more of the gauger's or laboratory's facilities or field offices.

(2) *Notice.* The Director shall give the commercial gauger or laboratory a notice containing specific written grounds for the proposed suspension or revocation, the scope of the proposed suspension or revocation, and all procedures and timeliness for appeal and review.

(3) *Appeal.* The commercial gauger or laboratory has 30 days from the date of the notice to file a written appeal to the Director. The appeal may contain an acceptance of responsibility and may also provide extenuating circumstances and rebuttal evidence. In addition, this appeal may ask for a meeting with the Director or his designee to discuss the proposed action. Failure to file an appeal within 30 days may result in the suspension or revocation of the commercial gauger's approval or the commercial laboratory's accreditation.

(4) *Response.* If the Director accepts the commercial gauger's or laboratory's appeal, he shall notify the gauger or laboratory immediately and close the case. If not, he shall notify the gauger or laboratory within 30 days of receipt of the appeal and advise him of his right to file a written petition to the Commissioner to review the proposed action.

(5) *Commissioner's review.* The commercial gauger or laboratory has 30 days from the date of the Director's response to file (with the Director) a written petition for the Commissioner to review the proposed action. The Commissioner or his designee shall review the petition and shall forward the written decision to the Director for implementation.

(6) *Publication.* The Director shall publish notice of suspensions or revocations of a commercial gauger's approval or a commercial laboratory's accreditation in the FEDERAL REGISTER and the Customs Bulletin, giving the effective date, duration, and scope of each such action.

(l) *Additional services and commodities.* (1) Customs will consider adding additional services or commodities to those set out in §151.13(a) upon the submission of a request setting out the scope

of the services or commodities being proposed, the identification of the specific standards and procedures that would be used, and technical and economic reasons why Customs should add the services or commodities.

(2) Currently-approved commercial gaugers and currently-accredited commercial laboratories which are approved or accredited to gauge or analyze certain commodities may request the Director, Laboratory & Scientific Services, to approve or accredit them to gauge or analyze additional commodities listed in § 151.13(a) by sending the Director a letter describing their proposal and giving the information set out in paragraphs (b)(1), (b)(2), (b)(6), and (b)(7) of § 151.13.

(m) *Costs of using Customs-approved commercial gaugers or Customs-accredited commercial laboratories.* No expense incurred by the use of a Customs-approved commercial gauger or a Customs-accredited commercial laboratory shall be borne by the Government.

[T.D. 87-39, 52 FR 9788, Mar. 26, 1987, as amended by T.D. 89-1, 53 FR 51267, Dec. 21, 1988; T.D. 90-78, 55 FR 40167, Oct. 2, 1990]

§ 151.14 Use of commercial laboratory tests in liquidation.

The “sediment and water” characteristic as set out in § 151.13(a)(2) and as determined by a Customs-accredited commercial laboratory shall be used for Customs purposes if the difference between the value found by the commercial laboratory and the value found by the Customs laboratory does not exceed 0.11 percent. If the difference exceeds this limit and the Customs-accredited commercial laboratory cannot establish that Customs is in error, then the Customs results shall be used.

[T.D. 90-78, 55 FR 40167, Oct. 2, 1990]

§ 151.15 Movement of merchandise to a centralized examination station.

(a) *Permission to transfer merchandise for examination.* When a shipment requires examination at a centralized examination station (CES), Customs Form 3461, or Customs Form 3461 (ALT) for land border cargo, or an attachment to either, may be used to request permission to transfer the merchandise to a CES. The entry filer must write, type or stamp the following lines on

the form or attachment, and must supply the information called for on the first three lines:

Containers to be transferred: ____ All or,

Container #'s ____, ____, ____

To CES _____

Approved by: U.S. Customs Inspector _____

Date _____

Unless the port director exercises his authority pursuant to paragraph (d) of this section, the reviewing inspector will initial and date the form or attachment being used, or stamp one copy of the Customs Form 3461 or 3461 (ALT) if required by the port director. A copy of this document will act as notification and authorization to the entry filer that the merchandise must be transferred to the importer-designated CES unless another CES is designated by the port director under paragraph (d) of this section.

(b) *Assumption of liability during transfer.* Merchandise designated for examination may be transferred from the importing carrier's point of unloading or from a bonded facility, to a CES, only if the transfer takes place under bond. The entry filer shall select one of the following bonded movements for the transfer to the CES unless the type of bonded movement to be used is specified by the port director under paragraph (d) of this section:

(1) If the merchandise is transferred directly to a CES by an importing carrier, the importing carrier shall remain liable under the terms of its international carrier bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(2) If the merchandise is transferred directly from a bonded carrier's facility to a CES or is delivered directly to the CES by a bonded carrier, the bonded carrier shall remain liable under the terms of its custodial bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(3) If containerized cargo, including excess loose cargo that is part of the containerized cargo, is transferred to a CES operator's own facility using his own vehicles, the CES operator shall be liable under the terms of his custodial